

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**DECISION AND ORDER
21-CR-37A**

MICHAEL KORNAKER,

Defendant.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1) for the performance of pretrial proceedings. On October 22, 2021, Magistrate Judge Schroeder filed a Report, Recommendation and Order recommending that the Court deny Defendant's motion to suppress. Dkt. 36.

Defendant filed objections to this recommendation on December 17, 2021, arguing that the IRS search warrant was both overbroad and insufficiently particularized insofar as it was not narrowly tailored to the evidence set forth in IRS Special Agent (SA) Quattrini's affidavit in support. Dkt. 44. Defendant argued that SA Quattrini's affidavit in support of the search warrant was focused on the U.S. Small Business Administration (SBA) fraud alleged in Counts 1-3 of the indictment, and therefore evidence seized from Defendant's email account regarding the alleged American Express credit card (AMEX) fraud set forth in Counts 4-5 was beyond the proper scope of the search warrant.

Defendant further argues that the 18 U.S.C. § 2705(b) application of the Government, seeking to prohibit Google from notifying Defendant of the existence of the

search warrant, contained material misrepresentations. Finally, Defendant alleges that the Government's § 2705(b) application was made specifically to avoid a motion to suppress when the search warrant was issued, as Defendant was already represented by counsel at that time. Defendant now seeks a *Franks* hearing regarding the alleged misrepresentations contained in the § 2705(b) application, as well as an order requiring the Government to explain to the Court *ex parte* how Defendant's awareness of the warrant would have undermined the ongoing investigation.

The Government filed its response in opposition on January 14, 2022. Dkt. 47. Oral argument on Defendant's objections was held before the Court via Zoom for Government on February 23, 2022.

Pursuant to 28 U.S.C. § 636(b)(1), the Court applies a *de novo* standard of review to the portions of a Report and Recommendation to which timely and specific objections have been raised.

Upon due consideration of the arguments, the Court adopts the conclusion and the reasoning of the Magistrate Judge as set forth in the Report, Recommendation and Order that Defendant Kornaker failed to establish either that certain documentation and data seized from his email account was beyond the proper scope of the valid search warrant issued to the IRS, or that the Government's 18 U.S.C. § 2705(b) application contained material misrepresentations. The parties are to appear before the Court via Zoom for Government tomorrow, March 16, 2022, as previously scheduled.

IT IS SO ORDERED.

s/Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: March 15, 2022